

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Retention by Broadcasters of)	MB Docket No. 04-232
Program Recordings)	
)	

TO: The Commission

**COMMENTS
OF
THREE ANGELS BROADCASTING NETWORK, INC.**

On behalf of Three Angels Broadcasting Network, Inc. ("3ABN"), we hereby submit these comments in response to the Commission's proposal to require broadcasters to retain recordings of their programming for an as-yet unspecified period of time.

3ABN is the licensee or permittee of nearly 100 Class A or low power TV ("LPTV") stations and two radio stations (one AM and one FM), and provides a satellite feed to many other low power TV and radio stations across the country. All of 3ABN's programming is religious (Seventh-day Adventist), noncommercial programming.

It is unclear from the text of the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding whether it intends to apply its recording requirement to religious broadcasters and noncommercial educational stations, where the likelihood of an indecency complaint is remote, or to LPTV stations, many of which do not have the resources for such an undertaking. The only hint we have that all of these stations are within the purview of the NPRM is in the Initial Regulatory Flexibility Analysis attached as Appendix A.

While we believe the rule proposed by the Commission would create undue and unnecessary burdens on many broadcasters, and raises First Amendment concerns as well, any such rule would be particularly harsh on noncommercial and religious broadcasters, especially those who operate low power facilities, with no countervailing government interest to be served. The Commission's primary rationale for its proposed taping rule is "to increase the effectiveness of the Commission's process for enforcing restrictions on obscene, indecent and profane broadcast programming." While there have been many indecency enforcement actions taken against commercial radio stations, we are unaware of any such action taken against a noncommercial or religious broadcaster. To enact a taping rule applicable to religious and noncommercial broadcasters would be an attempt to address a problem that does not exist. It would be worse than the proverbial attempt to swat a fly with a sledgehammer, because in this case there is no fly. The cost of such a requirement would be tremendous with no discernible public interest benefit to be gained.

The Commission asks whether its proposed taping requirement could also be used to enforce children's television commercial limits and sponsorship identification requirements. Again, there is nothing to be gained from enforcing such a requirement against religious and noncommercial broadcasters. 3ABN's programming has no commercials, and thus, there is no chance that any of its affiliated stations would violate these rules.

In 3ABN's case, nearly all of its programming is taped. Thus, if there should be any problems concerning 3ABN programming, it would be easy to review the tapes of the individual program(s) at issue. Requiring a separate tape of the broadcast day would

be unnecessarily duplicative, as well as unnecessary from an enforcement perspective considering the purpose of the taping requirement discussed above. It would make no sense to require all of 3ABN's affiliated stations to keep separate tapes of the same programming, and would create a financial burden many affiliates would be unable to bear. Since the likelihood of an indecency, children's programming or sponsorship identification violation is practically nil for these affiliates, such a burdensome requirement would constitute arbitrary and capricious rulemaking at its worst.

For the foregoing reasons, the Commission should not adopt its proposed taping requirement. Alternatively, any such requirement should be fine-tuned so as not to burden those stations who can least afford it and where the likelihood of an indecency, children's programming or sponsorship identification violation is lowest. This would include religious broadcasters, noncommercial educational radio stations and low power TV stations, at the very least. All of these entities should be exempt from any taping requirement adopted by the Commission.

Respectfully submitted,

THREE ANGELS BROADCASTING NETWORK, INC.

By: /david m. silverman/
David M. Silverman

COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

Its Attorneys

August 27, 2004